West Fork Energy, Inc., and P. & A. Coal, Inc. ***and*** **International Union, United Mine Workers of America and its District 28.** Cases 11–CA–12749 and 11–CA–12914

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge filed by the Union on June 6, 1988, an amended charge on July 28, 1988, and a second amended charge on August 9, 1991, all in Case 11–CA–12749, and a charge filed by the Union on August 26, 1988, an amended charge September 27, 1988, a second amended charge October 14, 1988, and a third amended charge on August 9, 1991, all in Case 11–CA–12914, the General Counsel of the National Labor Relations Board issued an amended consolidated complaint on August 16, 1991, against West Fork Energy, Inc., and P. & A. Coal, Inc., referred to jointly as the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although the Respondent was properly served copies of the charge, amended charges and the amended consolidated complaint, the Respondent has failed to file an answer to the amended consolidated complaint. However, West Fork Energy had filed an answer on August 5, 1988, to a complaint issued against it on July 21, 1988, in Case 11–CA–12749 by the General Counsel alleging that West Fork Energy had violated Section 8(a)(5) and (1) of the Act. In that answer West Fork Energy admitted in part and denied in part the allegations of that complaint. Furthermore, the General Counsel issued a consolidated complaint in Case 11–CA–12914 on October 24, 1988, against West Fork Energy, Inc. and William P. Harris, personally, alleging that they had violated Section 8(a)(1) and (5) of the Act. On November 9, 1988, West Fork Energy and William P. Harris filed an answer to the consolidated complaint, admitting in part, and denying in part, the allegations of the consolidated complaint and stating affirmative defenses. In accord with a non-Board settlement, on March 1, 1989, the Regional Director for Region 11 issued an order withdrawing the consolidated complaint. However, on April 22, 1991, the Regional Director advised that he was revoking the settlement and reinstating the consolidated complaint. The amended consolidated complaint was then issued August 16, 1991.

On September 23, 1991, the General Counsel filed a Motion for Summary Judgment inasmuch as no answer had been filed to the amended consolidated complaint. On December 18, 1991, the Board denied the Motion for Summary Judgment on the ground that the answers to the complaint and the consolidated complaint survived the breached settlement agreement and the subsequent unanswered amended consolidated complaint.[1]

On January 17, 1992, Respondent requested, by letters, that its answer to the complaint and answer to the consolidated complaint be withdrawn. On January 30, 1992, the Regional Director advised Respondent that the request to withdraw these answers was approved.

On February 7, 1992, the General Counsel filed this Motion for Summary Judgment. On February 14, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended consolidated complaint states that unless an answer is filed within 14 days of service, "all the allegations in the . . . complaint shall be deemed to be admitted to be true and may be so found by the Board."

In the absence of good cause being shown for the failure to file a timely answer to the amended consolidated complaint and inasmuch as the answers to the complaint and the consolidated complaints have been withdrawn, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent West Fork is now, and has been at all times material, a Virginia corporation with an office and place of business near Richlands, Virginia, where it is engaged in the operation of a coal mine. During the 12-month period preceding the issuance of the amended consolidated complaint, a representative period, in the course and conduct of its business, Respondent West Fork sold and shipped coal, valued in excess of $50,000, from its

[1] 305 NLRB No. 127.

Richlands facility directly to Clinchfield Coal Company, a Virginia corporation with an office and place of business in Lebanon, Virginia, which has been engaged in the mining, transportation, and sale of coal. During the 12-month period preceding the issuance of the amended consolidated complaint, a representative period, Clinchfield Coal Company, in the course and conduct of its business operations, sold and shipped from its Lebanon, Virginia facility products, goods, and materials valued in excess of $50,000 directly to points located outside the Commonwealth of Virginia. Clinchfield Coal Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Respondent P. & A. Coal is a Virginia corporation with an office and place of business located near Richlands, Virginia, where it is engaged in the operation of a coal mine.

At all times material Respondent West Fork and Respondent P. & A. Coal have been affiliated business enterprises with common officers, ownership, and management; have formulated and administered a common labor policy affecting employees of the operations; have utilized the same equipment; and have provided services for common customers. By virtue of these operations, Respondent West Fork and Respondent P. & A. Coal constitute a single integrated business enterprise and a single employer within the meaning of the Act. We find that Respondent West Fork is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We find that Respondent P. & A. Coal is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We find that Respondent West Fork and Respondent P. & A. Coal, herein referred to as the Respondent, are an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. Since on or about December 6, 1987, and continuing to date, Respondent, through the actions of William P. Harris, its supervisor within the meaning of Section 2(11) of the Act, at Respondent's West Fork, Richlands, Virginia coal mining operation, has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act by threatening employees, on March 9, 1988, with layoffs and mine closure if they pursued their rights under the collective-bargaining agreement. The appropriate unit is:

> All employees employed in the mining of coal at Respondent's West Fork, Richlands, Virginia, coal mine; excluding office clerical employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

2. Since on or about October 29, 1987, and at all times material, the Union has been the exclusive collective-bargaining representative of the employees of Respondent in the above-described unit, and since that date the Union has been recognized at the above location as such representative by Respondent. Such recognition was embodied in a collective-bargaining agreement, which was effective by its terms for the period October 1, 1984, to January 31, 1988. At all times since October 29, 1987, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above, and by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to pay, wages, hours of employment, and other terms and conditions of employment.

3. Commencing on or about December 21, 1987, and continuing to date, the Union has requested, and is requesting, Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive representative of all employees of Respondent in the unit. Commencing on or about December 21, 1987, and at all times thereafter, Respondent did refuse, and continues to refuse to bargain collectively with the Union as the exclusive collective-bargaining representative of all employees in the unit, by

(a) failing and refusing, on or about January 1, 1988, and at all times thereafter, including June 8, 1988, unilaterally and without notice to or bargaining with the Union, to continue health and life insurance coverage for its laid-off employees;

(b) failing and refusing, on or about January 31, 1988, and at all times thereafter, unilaterally and without notice to or bargaining with the Union, to post bargaining unit jobs as required by the terms of the collective-bargaining agreement;

(c) failing and refusing, since on or about February 9, 1988, unilaterally and without notice to or bargaining with the Union, to process grievances filed by the Union pursuant to the collective-bargaining agreement;

(d) dealing directly with the employees and pursuant thereto, unilaterally, without notice to or bargaining with the Union, announcing that it would reduce the wages, and discontinue overtime pay,

holiday pay, and vacation pay of its employees, on or about July 28, 1988;

(e) dealing directly with employees, and pursuant thereto, unilaterally, without notice to or bargaining with the Union, modifying the wages, hours, and benefits available to its laid-off employees, on or about July 27, 1988; and

(f) dealing directly with employees, and pursuant thereto, unilaterally, and without notice to or bargaining with the Union, modifying its employees' work schedules, on or about August 5, 1988.

Respondent, by the acts described above in paragraphs 1 and 3, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

Respondent, by the acts described above in paragraph 3, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

CONCLUSION OF LAW

By the conduct described above, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Accordingly, we shall order the Respondent to continue the terms and conditions of employment in effect prior to its unlawful changes and to make whole unit employees[2] for its failure to adhere to those terms relating, inter alia, to insurance coverage for laid-off employees; posting of bargaining unit jobs; processing of grievances; wages, hours, and benefits for laid-off employees; and employee work schedules. The Respondent shall also reimburse its unit employees for any expenses ensuing from the Respondent's unlawful failure to continue insurance coverage, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), and to pay interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, West Fork Energy, Inc., and P. & A. Coal, Inc., Richlands, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with layoff and mine closure if they pursue their rights under the collective-bargaining agreement.

(b) Refusing to bargain collectively with the International Union, United Mine Workers of America and its District 28, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive representative of all employees in the bargaining unit by unilaterally, without notice to or bargaining with the Union, failing and refusing to continue health and life insurance for its laid-off employees, by refusing to post bargaining unit jobs as required by the terms of the collective-bargaining agreement, or by failing and refusing to process grievances filed by the Union pursuant to the terms of the collective-bargaining agreement.

(c) Refusing to bargain collectively with the International Union, United Mine Workers of America and its District 28, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive representative of all employees in the bargaining unit by dealing directly with employees and unilaterally, without notice to or bargaining with the Union, announcing reduction of wages, discontinuance of overtime pay, holiday pay, or vacation pay, or modifying the wages, hours or benefits available to its laid-off employees or modifying its employees' work schedules.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole unit employees for any losses they may have suffered as a result of Respondent's unlawful unilateral changes, with interest, as set forth in the remedy section of this Decision and Order.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of money due under the terms of this order.

(c) Post at its facility in Richlands, Virginia, copies of the attached notice marked "Appendix."[3]

[2] See *Ogle Protection Service*, 183 NLRB 682 (1970).

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with layoff or mine closure if they pursue their rights under the collective-bargaining agreement.

WE WILL NOT refuse to bargain collectively with the International Union, United Mine Workers of America and its District 28, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive representative of all employees in the bargaining unit by unilaterally, without notice to or bargaining with the Union, failing and refusing to continue health and life insurance for our laid-off employees, by refusing to post bargaining unit jobs as required by the terms of the collective-bargaining agreement, or by failing and refusing to process grievances filed by the Union pursuant to the terms of the collective-bargaining agreement.

WE WILL NOT refuse to bargain collectively with the International Union, United Mine Workers of America and its District 28 with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive representative of all employees in the bargaining unit by dealing directly with our employees and unilaterally, without notice to or bargaining with the Union, announcing reduction of wages, discontinuance of overtime pay, holiday pay, or vacation pay, or modifying the wages, hours or benefits available to our laid-off employees or modifying our employees' work schedules.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole unit employees for any losses they may have suffered as a result of our unlawful unilateral changes.

WEST FORK ENERGY, INC., AND P. & A. COAL, INC.